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1 Countryman v. Dep't of Social and Health Services, PAB No. D94-025 (1995); Rainwater v. School
2 for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No.
3 D93-053 (1994); Holladay v. Dep't of Veteran's Affairs, PAB No. D91-084 (1992).

4 5 **II. FINDINGS OF FACT**

6 2.1 Appellant Eric Q. Franklin is an Accountant 2 and a permanent employee of Respondent
7 Department of Social and Health Services (DSHS). Appellant and Respondent are subject to
8 Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC.
9 Appellant filed a timely appeal with the Personnel Appeals Board on January 24, 1997.

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11 2.2 By letter dated January 15, 1997, Appellant was given a reduction in salary for neglect of
12 duty, inefficiency, insubordination, gross misconduct and willful violation of published employing
13 agency or department of personnel rules or regulations. The letter alleges that Appellant spent five
14 working days, September 20, 1996, through September 27, 1996, at his home without supervisory
15 approval or a telecommute agreement. (Exh. R-37).

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17 2.3 At the time of the incident giving rise to this appeal, Appellant was assigned to a special
18 project that required him to go to the various Region 5 Community Services Offices (CSOs) and
19 conduct physical inventories of the equipment at the CSOs. This assignment was given to
20 Appellant while he was the subject of an investigation that was being conducted by the Washington
21 State Patrol.

22
23 2.4 Prior to being given the inventory assignment, Appellant had been briefly assigned to his
24 home. He was assigned to his home on July 19, 1996. (Exh. R-6). He was reassigned to the
25 inventory project by letter dated July 24, 1996. (Exh. R-7). The July 24 letter instructed Appellant
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1 to report to the Region 5 Administration Office of Community Services Division. It also instructed
2 Appellant not to go into the accounting work area or to have access to accounting paper work. On
3 July 24, 1996, Appellant's supervisor instructed Appellant to proceed to the CSOs to complete the
4 inventory assignment.

5
6 2.5 While conducting the inventory of the Puyallup CSO, Appellant reinjured a previous back
7 injury. As a result, he was unable to proceed with the inventory project until he was cleared to
8 perform the duties by his physician. On August 13, 1996, Appellant's physician indicated that
9 Appellant could return to work as of August 14, 1996, but that Appellant could not perform
10 excessive lifting over 20 pounds and could not perform repetitive lifting. (Exh. R-15). Respondent
11 determined that the inventory project could be completed consistent with Appellant's physician's
12 instructions.

13
14 2.6 Due to concerns raised about Appellant having access to the Region 5 office during the
15 employee investigation process, by memorandum dated August 14, 1996, Appellant was instructed
16 to make arrangements with his supervisor, Robert St. John; Regional Administrator Linda Evans; or
17 the Region 5 Personnel Office before entering the DSHS Centennial 2 Building. (Exh. R-17). The
18 memorandum did not ban Appellant from entering the building, but rather required him to contact
19 certain persons before entering the building.

20
21 2.7 Because of concerns related to Appellant's physical ability to perform the inventory project,
22 Respondent sought further clarification of Appellant's physical limitations from Appellant's
23 physician. Appellant's physician indicated that Appellant could return to full-time, light duty work,
24 effective September 3, 1996. (Exh. R-26). Appellant remained on leave until noon on September 5,
25 1996. (Exh. R-33).

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2 2.8 Appellant's supervisor directed him to report to the Bremerton CSO on September 18, 1996,
3 to complete the inventory. Appellant indicated that the inventory would be completed on
4 September 19, 1996. Appellant's travel expense voucher, establishes that Appellant completed his
5 work at the Bremerton CSO on September 19, 1996. Appellant did not report to work between
6 September 20, 1996 and September 27, 1996.

7
8 2.9 Appellant and his supervisor had no further contact with each other until September 30,
9 1996, when Appellant's supervisor paged Appellant and Appellant returned the call from his home.
10 Appellant indicated that he was completing the inventory assignment at home.

11
12 2.10 Appellant had not requested nor had he been assigned to work at home on the inventory
13 project. In addition, Appellant had not entered into a telecommuting agreement with Respondent
14 allowing him to work at home on the inventory project. The inventory project required Appellant to
15 physically go to the CSOs and locate equipment listed on a computer printout and hand write the
16 location of the equipment on the printout. No equipment was required to complete the inventory
17 other than the computer printout, which Appellant's supervisor provided to Appellant, and a pencil.

18
19 2.11 Appellant's supervisor initiated a Personnel Conduct Report (PCR) against Appellant on
20 October 3, 1996. The PCR stated that Appellant "spent 5 to 6 working days working at home
21 without supervisory approval or a telecommute agreement per Personnel Policy 590." (Exh. R-37).
22 The PCR was investigated and misconduct was found.

23
24 2.12 Linda Evans, Regional Administrator, held an administrative hearing. She allowed
25 Appellant to either provide her with a work product for the days in question or to submit leave slips
26

1 for the days in question. Appellant failed to submit either a work product or leave slips. If
2 Appellant had produced a work product or submitted leave slips, Ms. Evans would not have taken
3 disciplinary action against Appellant. (Testimony of Linda Evans).

4
5 2.13 After considering all of the information provided, Ms. Evans decided that a reduction in
6 salary equal to the number of days that Appellant was at home was appropriate. Therefore, she
7 reduced Appellant's salary for one month. The reduction amounted to 5 days of pay.

8 9 **III. ARGUMENTS OF THE PARTIES**

10 3.1 Respondent argues that between September 20 and 27, 1996, Appellant was at home,
11 without authorization, during work hours. Respondent contends that Appellant did not report to his
12 supervisor, did not complete the task he had been assigned, and was not where he was supposed to
13 be which constitutes neglect of duty and inefficiency. Respondent contends that Appellant failed to
14 follow his supervisor's instructions which constitutes insubordination. Respondent further contends
15 that Appellant was paid during this time even though he produced no work product which
16 constitutes gross misconduct. Respondent also contends that Appellant violated agency policy
17 when he chose to stay home without approval or without a telecommuting agreement. Respondent
18 argues that Appellant did not want to do the inventory project and that he felt it was outside of his
19 Accountant 2 responsibilities. However, Respondent contends that the project was appropriate for
20 an Accountant 2 and fell within Appellant's position description. Respondent further argues that
21 management attempted to negotiate and work with Appellant short of imposing discipline, but that
22 Appellant chose not to cooperate.

23
24 3.2 Appellant provided no oral argument or testimony during the hearing on his appeal.
25 However, he asked the Board to consider his August 3, 1998 grievance response letter as his closing
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1 argument. Appellant's August 3, 1998 letter addresses issues that were not the basis for his
2 discipline and are not germane to the issue before the Board. Therefore, the following paragraph is
3 a summary of Appellant's arguments that relate to the allegation that he was at home for five days
4 without authorization or a telecommuting agreement.

5
6 Appellant argues that his supervisor banned him from entering the Region 5 building and assigned
7 him no official work station. Appellant asserts that his supervisor was aware of his whereabouts at
8 all times and that he understood from his supervisor that his official duty station was his home
9 where he was to remain until his supervisor contacted him. Appellant further asserts that he was on
10 administrative leave and stand-by which may have also been referred to as a telecommute
11 agreement. Appellant argues that he was not insubordinate and he did not disobey his supervisor's
12 directives. Appellant contends that he would have made a great mistake if he had taken Ms. Evans'
13 offer to turn in leave slips when he believed in his innocence. Appellant further contends that his
14 supervisor was upset about Appellant filing a grievance and that there was a history of hostility
15 between Appellant and management.

16 17 **IV. CONCLUSIONS OF LAW**

18 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
19 herein.

20
21 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting
22 the charges upon which the action was initiated by proving by a preponderance of the credible
23 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the
24 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of
25 Corrections, PAB No. D82-084 (1983).

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2 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her
3 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't
4 of Social & Health Services, PAB No. D86-119 (1987).

5
6 4.4 Inefficiency is a failure to produce the desired effect with the minimum of energy and time.
7 Droege v. Dep't of Information Services, PAB No. D88-024 (Littlemore, Hrg. Exam.), aff'd by
8 Board (1988).

9
10 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior
11 and is defined as not submitting to authority, willful disrespect or disobedience. Countryman v.
12 Dep't of Social and Health Services, PAB No. D94-025 (1995).

13
14 4.6 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
15 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

16
17 4.7 Willful violation of published employing agency or institution or Personnel Resources
18 Board rules or regulations is established by facts showing the existence and publication of the rules
19 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
20 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &
21 Health Services, PAB No. D93-053 (1994).

22
23 4.8 Respondent has shown that Appellant did not have a telecommute agreement with the
24 agency and that he did not have the permission of his supervisor to work at home. Respondent has
25 met its burden of proof that by staying at home for five working days without an agreement or the
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1 permission of his supervisor, Appellant neglected his duty, was inefficient and insubordinate, and
2 willfully violated agency or department of personnel rules or regulations. Appellant has a duty to
3 report to work as directed. By letter dated July 24, 1996, Appellant was directed to report to the
4 Region 5 Administration Office. Then he was given an assignment that was to be completed at the
5 CSOs. He was not directed to report to his home to complete the assignment. Therefore, Appellant
6 neglected his duty by being at home for five working days from September 20 to 27, 1996 without
7 authorization. In addition, Appellant's failure to complete the inventory assignment on site at the
8 CSOs constitutes inefficiency. Appellant's disregard of his supervisor's directives constitutes
9 insubordination. Appellant was aware of the directives of his supervisor and was aware of agency
10 policies and expectations that he report for work and perform work during work hours. Yet he
11 willfully violated the policies and expectations when he chose to stay home for five working days
12 without authorization. Appellant was paid for the five days that he did not perform work at the
13 CSOs and did not report to the Region 5 Administration Office as directed, and therefore, his
14 actions rose to the level of gross misconduct.

15
16 4.9 Appellant has advanced various explanations for why he was at home for five working days
17 without authorization. Appellant argues that he had a verbal agreement with his supervisor, that he
18 had been assigned to home and was on standby, and that he was "banned" from entering the office.
19 However, Appellant has provided no persuasive, credible evidence or testimony to support his
20 explanations.

21
22 4.10 By a preponderance of the credible evidence and testimony, Respondent has proven the
23 charges in the disciplinary letter and the disciplinary sanction of a reduction in salary equal to the
24 number of days that Appellant was at home without authorization is appropriate. The appeal should
25 be denied.

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V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Eric Q. Franklin is denied.

DATED this _____ day of _____, 1999.

WASHINGTON STATE PERSONNEL APPEALS BOARD

Howard N. Jorgenson, Chair

Walter T. Hubbard, Member

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